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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/764,931 | 01/26/2004 | Peter Robert Foley | CM-2491D | 9645 |

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| EXAMINER | |
|---|---|
| DELCOTTO, GREGORY R | |
| **ART UNIT** | **PAPER NUMBER** |
| 1751 | |

| MAIL DATE | DELIVERY MODE |
|---|---|
| 05/21/2007 | PAPER |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

| Office Action Summary | Application No. | Applicant(s) | |
|---|---|---|---|
| | 10/764,931 | FOLEY ET AL. | |
| | Examiner | Art Unit | |
| | Gregory R. Del Cotto | 1751 | |

*-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --*

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1)☒ Responsive to communication(s) filed on *20 February 2007*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4)☒ Claim(s) *1,2 and 6* is/are pending in the application.

4a) Of the above claim(s) *1* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *2 and 6* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

**Application Papers**

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☒ Certified copies of the priority documents have been received in Application No. 09/909,403.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

## DETAILED ACTION

1. Claims 1, 2, and 6 are pending. Claims 3-5 and 7-12 have been canceled. Applicant's arguments and amendments filed 2/20/07 have been entered.

Claim 1 is withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 1/5/05.

### Objections/Rejections Withdrawn

The following objections/rejections as set forth in the Office action mailed 11/24/06 have been withdrawn:

None.

### *Priority*

Acknowledgment is made of applicant's claim for foreign priority under 35 U.S.C. 119(a)-(d). The certified copy has been filed in parent Application No. 09/909403, filed on 7/19/2001.

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section

> 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.
>
> (e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a)

Claims 2 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Feng (US 5,929,007) or JP-141800, both in view of Uchiyama et al (US 2002/0010106).

'800 teaches a liquid detergent composition containing 0.1 to 10% by weight of a swellable clay mineral, 0.1 to 30% of a solvent, 1 to 20% of a surfactant and 0.5 to 30% of an alkali agent. Suitable solvents include diethylene glycol monobutyl ether, etc. See page 4, lines 10-50. Note that, the Examiner asserts that the general formula for the solvent material as taught by '800 would encompass propylene glycol butyl ether as recited by instant claim 2. See page 3, line 30 to page 4, line 5. Note that, amine oxide surfactants and monoethanolamine may also be used in the compositions. See page 9, lines 1-30. Suitable additional ingredients include fragrances, dyes, etc. See page 6, lines 1-15. The product of the invention my be used as-is, and an aerosol or spray-type product is also appropriate from the standpoint of ease of use. See page 6, lines 1-10. Note that, the Examiner asserts that the broad teachings of '800 would suggest a spray of the cleaning product having the same droplet size as recited by the instant claims.

'800 teaches that the compositions may be used to clean organic materials adhered to household stoves, ovens used in cooking, vents, plywood, glass, refrigerators, and other kitchen items. See page 3, lines 1-10. The Examiner asserts that other kitchen items as taught by '800 would encompass tableware or cookware having oil or grease adhered to the surface.

Feng teaches alkaline aqueous hard surface cleaning compositions which exhibit good cleaning efficacy against hardened dried or baked on greasy soil deposits. The compositions comprise 0.01 to 0.85% by weight of amine oxide, 0 to 1.5% by weight of chelating agent, 0.01% to 2.5% by weight of caustic, 3% to 9% by weight of glycol ether solvent system comprising one glycol ether or glycol ether acetate solvent having a solubility in water of not more than 20% by weight water and a second glycol ether or glycol ether acetate having a solubility of approximately 100% by weight wherein the ratio of the former to the latter is from 0.5:1 to 1.5:1, 0 to 5% by weight of a water-soluble amine containing organic compound, 0 to 2.5% by weight of a soil anti-redeposition agent, and 0 to 2.5% of optional constituents. See Abstract. The caustic agent is present in the compositions to ensure that the overall pH of the compositions is at least 11.5 or greater. Suitable solvents which exhibit a solubility in water of approximately 100% by weight include diethylene glycol n-butyl ether. Note that, the Examiner asserts that the general formula for the solvent material as taught by Feng et al would encompass propylene glycol butyl ether as recited by instant claim 2. See column 4, lines 20-65. The compositions preferably include a soil antiredeposition agents which may be synthetic hectorite, colloidal silica, etc. See column 5, lines 50-69.

Another desirable additive is a thickening agent such as those based on alginates and gums including xanthan gum. See column 6, lines 5-40. Additionally, the compositions may contain optional constituents such as buffers, pH buffering agents, fragrances, fragrance carriers, and adjuvants which increase their miscibility. See column 6, lines 30-40. Also, these compositions may desirably be provided as a ready to use product in a manually operated spray dispensing container. See column 8, lines 1-35. Note that, the Examiner asserts that the broad teachings of Feng would suggest a spray of the cleaning product having the same droplet size as recited by the instant claims.

Specifically, Feng teaches 2.0% amine oxide, 0.5% EDTA salt, 0.8% NaOH, 3.0% monoethanolamine, 3.0% glycol ether, low water soluble, 3.7% glycol ether, high water soluble, the balance water. See column 9, lines 35-50. The low water soluble glycol ether is propylene glycol n-butyl, the high water soluble glycol ether is dipropylene glycol methyl ether, etc.

Feng or '800 do not teach the use of cyclodextrin or a method of removing solids from tableware by spraying using a composition containing an organic solvent system,organoamine, cyclodextrin, and the other requisite components of the composition in the specific proportions as recited by the instant claims.

Uchiyama et al teach a stable composition for removing unwanted molecules form a surface comprising cyclodextrin. The compositions are suitable for capturing unwanted molecules from inanimate surfaces including dishes. See Abstract. When the surfaces are treated with the compositions, the functionally-available cyclodextrin complexes with the unwanted molecules, thereby effectively removing and/or reducing

the presence of the unwanted molecules on the treated surfaces. See para. 15. The compositions can be either emulsions/dispersions or clear, single-phase solutions. See para. 12. Additionally, the compositions may contain a carrier such as alcohol. See para 137.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to use cyclodextrin in the composition taught by Feng or '800, with a reasonable expectation of success, because Uchiyama et al teach the use of cyclodextrin in compositions for cleaning dishes effectively removes and/or reduces the presence of the unwanted molecules on the treated surfaces.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to remove soils from tableware by spraying using a composition containing an organic solvent system, organoamine, cyclodextrin, and the other requisite components of the composition in the specific proportions as recited by the instant claims, with a reasonable expectation of success, because the broad teachings of Feng or '800 in combination with Uchiyama et al suggest removing soils from tableware by spraying using a composition containing an organic solvent system, organoamine, cyclodextrin, and the other requisite components of the composition in the specific proportions as recited by the instant claims.

Note that, the Examiner asserts that the teachings of Feng or '800, both in combination with Uchiyama et al, would suggest compositions having the same liquid surface tension as recited by the instant claims because Feng or '800, both in

combination with Uchiyama et al, suggest compositions containing the same components in the same amounts as recited by the instant claims.

***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 2 and 6 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 36-40 of copending Application No. 09/909233 in view of Uchiyama et al (US 2002/0010106) or claims 30-35 of 09/909288 in view of Uchiyama et al (US 2002/0010106). Note that, for purposes of double-patenting, claims 30-32 of 09/909288 which are dependent upon canceled claim 1, have been interpreted to be dependent upon claim 57.

Claims 36-40 of 09/909233 or claims 30-35 of 09/909288 encompass all the material limitations of the instant claims except for the inclusion of a cyclodextrin.

Uchiyama et al are relied upon as set forth above.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to use cyclodextrin in the composition used in the method recited by claims 36-40 of 09/909233 or claims 30-35 of 09/909288, with a reasonable expectation of success, because Uchiyama et al teach the use of cyclodextrin in compositions for cleaning dishes effectively removes and/or reduces the presence of the unwanted molecules on the treated surfaces.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to remove soils from tableware using a composition containing an organic solvent comprising an organoamine, cyclodextrin, and the other requisite components of the composition in the specific proportions as recited by the instant claims, with a reasonable expectation of success, because claims 36-40 of 09/909233 or claims 30-35 of 09/909288 in combination with Uchiyama et al suggest removing soils from tableware using a composition containing an organic solvent comprising an organoamine, cyclodextrin, and the other requisite components of the composition in the specific proportions as recited by the instant claims.

This is a provisional obviousness-type double patenting rejection.

***Response to Arguments***

With respect to the rejection of the instant claims under 35 USC 103(a) using JP-141800 or Feng et al, both in combination with Uchiyama et al, Applicant states that this combination of references does not teach or suggest the claimed combination for the solvent system along with a surfactant and cyclodextrin wherein the composition has a

liquid surface tension of less than 24.5 mN/M and an average droplet size when sprayed from about 3 microns to about 10 microns. In response, note that, as stated above, the Examiner maintains that the broad teachings of '800 or Feng et al, both in combination with Uchiyama et al, would suggest compositions having the same surface tension as recited by the instant claims because '800 or Feng et al, both in combination with Uchiyama et al suggests compositions containing the same components in the same amounts as recited by the instant claims. Additionally, both '800 and Feng et al teach compositions which may be applied to the surface using spray bottles, and the Examiner maintains that the broad teachings of '800 or Feng et al suggest a spray of the cleaning product having the same droplet size as recited by the instant claims. Note that, Applicant has provided no data showing that the spray as taught by '800 or Feng et al has a different droplet size than recited by the instant claims.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory R. Del Cotto whose telephone number is (571) 272-1312. The examiner can normally be reached on Mon. thru Fri. from 8:30 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Douglas McGinty can be reached on (571) 272-1029. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Gregory R. Del Cotto
Primary Examiner
Art Unit 1751

GRD

May 17, 2007